

# ARKANSAS SUPREME COURT

No. CR 07-731

CARL TICE  
Appellant

v.

STATE OF ARKANSAS  
Appellee

Opinion Delivered      January 31, 2008

APPEAL FROM THE CIRCUIT COURT  
OF POPE COUNTY, CR 2003-180,  
HON. DENNIS SUTTERFIELD,  
JUDGE; MOTION TO WITHDRAW AS  
COUNSEL

AFFIRMED; MOTION GRANTED.

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## PER CURIAM

A jury convicted appellant Carl Tice of three counts of raping his daughter. Appellant appealed the judgment and the Arkansas Court of Appeals affirmed. *Tice v. State*, CACR 03-1314 (Ark. App. Dec. 15, 2004). Appellant timely filed in the trial court a pro se petition for postconviction relief under Ark. R. Crim. P. 37.1. The trial court appointed counsel to represent appellant in the Rule 37.1 proceeding, and, following a hearing, the petition was denied. On appeal, this court reversed and remanded for findings as to instructions to counsel, compliance with those instructions, and an order in compliance with Ark. R. Crim. P. 37.3(c). *Tice v. State*, CR 06-114 (Ark. Nov. 16, 2006) (per curiam). On remand, counsel filed an amended petition and the petition, as amended, was again denied.

Counsel appointed to represent appellant in his Rule 37.1 proceeding, Mr. J. Michael Helms, has now filed in this court a brief asserting that appellant's appeal of the order denying postconviction relief has no merit, and a motion requesting that he be granted permission to withdraw as counsel.

While a “no-merit” brief is typically filed in a direct appeal from a judgment, this court has allowed the filing of no-merit briefs in postconviction appeals. See *Hewitt v. State*, 362 Ark. 369, 208 S.W.3d 185 (2005) (per curiam); *Brady v. State*, 346 Ark. 298, 57 S.W.3d 691 (2001) (per curiam). *Anders v. California*, 386 U.S. 738 (1967) and Arkansas Supreme Court Rule 4-3(j)(1) set requirements for the withdrawal of counsel for a defendant in a criminal case after a notice of appeal has been filed on the basis that an appeal is without merit.

Under Rule 4-3, an attorney who wishes to withdraw from an appeal must abstract and brief all of the rulings that were adverse to his client, listing those rulings in his argument. Mr. Helms indicates in his brief that there were six adverse rulings, although he also contends, without further elaboration, that there was no issue preserved for appeal. He nevertheless addressed in his brief six grounds for relief from the amended petition.

On review of an order entered in a Rule 37.1 proceeding, we need only consider preliminary procedural matters, any denial of an evidentiary hearing, and those rulings contained within the order denying postconviction relief, as an appellant has an obligation to obtain a ruling on any issue to be preserved for appeal. See *Howard v. State*, 367 Ark. 18, \_\_\_ S.W.3d \_\_\_ (2006); *Beshears v. State*, 340 Ark. 70, 8 S.W.3d 32 (2000). The trial court’s order addressed only six grounds for relief from the amended petition, finding that the petition was inadequate as to each claim in failing to state facts for a showing that appellant was entitled to relief. Those six issues were not fully addressed by the trial court because the amended petition was not properly verified, and we accordingly affirm the denial of postconviction relief and grant the motion to be relieved.

Our instructions to the trial court on remand required clarification as to whether appellant was to be permitted to amend the petition, with assistance from Mr. Helms. Mr. Helms did file an

amended petition and the trial court accepted it; the order clearly addressed only those grounds presented in the amended petition and did not refer to the previous petition. While the trial court granted permission to amend the petition, the amended petition did not comply with the verification requirements under Rule 37.1(d), and the trial court could not consider the grounds presented in the amended petition.

Rule 37.1(d) provides the form of affidavit, to be sworn before a notary or other official authorized to administer oaths, required to appear on the petition. Here, appellant signed the amended petition and his signature was notarized, but without any affidavit confirming the oath that was sworn. As no affidavit in substantially the form provided in Rule 37.1(d) appeared on the amended petition, the verification and the amended petition were deficient. *See Bunch v. State*, 370 Ark. 113, \_\_\_ S.W.3d \_\_\_ (2007) (per curiam). The trial court could not consider the issues in the amended petition. *Id.* The trial court therefore correctly denied postconviction relief on all grounds set out in the amended petition.

In accordance with *Anders* and Rule 4-3(j)(2), appellant was provided with a copy of the brief and motion to be relieved and has submitted pro se points for reversal. We need not address the merits of the pro se points. To the extent that the points do not simply overlap with and reassert the issues raised in the brief, appellant's arguments fail for the same reason as those made by Mr. Helms in the brief. Because the amended petition was not properly verified, the trial court could not grant postconviction relief under Rule 37.

Affirmed; motion granted.